

December 30, 2024

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

BY: vl
DEPUTY

MARK ORTEGA, individually and on
behalf of all others similarly situated,
Plaintiff,

v.

DITOMMASO INC.,
and DATA KING OF NEW YORK INC.,
and MERIDIAN SERVICES L.L.C.,
Defendants.

Case No. 5:24-CV-369-JKP-ESC

PLAINTIFF'S MOTION FOR CLERK'S ENTRY OF DEFAULT

Plaintiff, Mark Anthony Ortega ("Plaintiff"), requests that the Clerk of Court enter default against Defendant Meridian Services L.L.C. ("Meridian"), pursuant to Federal Rule of Civil Procedure 55(a). In support of this request, Plaintiff states the following:

SUMMARY

1. The Proof of Service (ECF No. 38) demonstrates that Meridian was properly served with a copy of Plaintiff's Second Amended Complaint (ECF No. 16) in this case on August 26, 2024.

2. More than twenty-one (21) days have elapsed since the date of service of process, and Meridian has failed to answer, challenge, or otherwise defend as required by Federal Rule of Civil Procedure 12(a)(1)(A) and as demonstrated by the record in this action and by the Declaration of Mark Anthony Ortega. *See Exhibit A.*

BACKGROUND

3. On April 10, 2024, Plaintiff filed his Original Complaint (ECF No. 1) against Meridian in this suit seeking monetary relief for violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 et seq. 47 C.F.R. § 64.1200(d)(6), and the Texas Business and Commercial Code, Chapter 302.

4. On May 20, 2024, Plaintiff filed his First Amended Complaint (ECF No. 8).

5. On June 25, 2024, Plaintiff filed his Second Amended Complaint (ECF No.16).

6. Plaintiff properly served Meridian with the Complaint and Summons on August 26, 2024.

7. Meridian has not appeared in this action.

ARGUMENTS AND AUTHORITIES

8. The Clerk of Court must enter a default against a party who has not filed a responsive pleading or otherwise defended the suit. Fed. R. Civ. P. 55(a); *see N.Y. Life Ins. Co. v. Brown*, 84 F.3d 137, 141 (5th Cir. 1996).

9. The Clerk should enter a default against Meridian because it did not file a responsive pleading within 21 days of service. Fed. R. Civ. P. 12(a)(1)(A)(i); Fed. R. Civ. P. 6(d); *see* Fed. R. Civ. P. 55(a).

10. The Clerk should enter a default against Meridian because it did not otherwise defend the suit. Fed. R. Civ. P. 55(a).

11. Because Meridian did not file a responsive pleading or otherwise defend the suit, it is not entitled to notice of entry of default. *See* Fed. R. Civ. P. 5(a)(2); *New York Life Ins. Co. v. Brown*, 84 F.3d 137, 141-42 (5th Cir. 1996).

12. Plaintiff is therefore, entitled to entry of default against Meridian because it has failed to file an answer to the Original Complaint or any other responsive pleadings. This entry of default is authorized by Rule 55 of the Federal Rules of Civil Procedure.

PRAYER

For the foregoing reasons, Plaintiffs respectfully request the Clerk of Court to enter a default against Defendant Meridian in this matter.

Dated: December 30, 2024

Respectfully submitted,

Mark Anthony Ortega
Plaintiff, Pro Se

/s/ Mark Anthony Ortega
mortega@utexas.edu
PO Box 702099
San Antonio, TX 78270
Telephone: (210) 500-6839

CERTIFICATE OF SERVICE

Pursuant to Rule 5 of the Federal Rules of Civil Procedure, the undersigned Plaintiff certify that the foregoing document has been filed with the Court electronic case filing system and served upon all known parties by e-service, first class mail, facsimile and/or certified mail, return receipt requested on December 30, 2024.

/s/ Mark Anthony Ortega
Mark Anthony Ortega

Exhibit A

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FOR THE WESTERN DISTRICT OF TEXAS
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MARK ORTEGA, individually and on
behalf of all others similarly situated,
Plaintiff,

v.

DITOMMASO INC.,
and DATA KING OF NEW YORK INC.,
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Defendants.

Case No. 5:24-CV-369-JKP-ESC

DECLARATION IN SUPPORT OF CLERK’S ENTRY OF DEFAULT

I hereby certify that I, Mark Anthony Ortega, am the Plaintiff in the above cause, and that Defendant Meridian Services L.L.C. (“Meridian”) was served on August 26, 2024 as evidenced by the Proof of Service.

I further certify that the defendant has failed to serve an answer or other responsive pleading; the defendant is neither an infant (under age 21) nor an incompetent person; the defendant is not in the active military service of the United States of America or its officers or agents or was not six months prior to the filing of the case. Therefore, the Clerk is requested to enter a default against said defendant.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: December 30, 2024

Mark Anthony Ortega
Plaintiff, Pro Se

/s/ Mark Anthony Ortega
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San Antonio, TX 78270
Telephone: (210) 500-6839